

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PRUDENTIAL PROPERTY &
CASUALTY INSURANCE CO.,

Plaintiff

v.

ADAM EPSTEIN,

Defendant

CIVIL ACTION

No. 03-4276

OPINION

March 16, 2005

Pollak, J.

I.

Cross-motions for summary judgment are before the court in this declaratory judgment action, brought by Prudential Property and Casualty Insurance Company (“Prudential”) under the court’s diversity jurisdiction, to settle a dispute over coverage claimed by its insured, defendant Adam Epstein. Epstein has claimed coverage under both his own and his mother’s uninsured/underinsured motorist (“UM/UIM”) policies for injuries he suffered in an automobile accident while driving a car owned by his girlfriend, Margaret Sinclair, for which she had no UM/UIM coverage. Prudential seeks judicial confirmation that it is entitled to refuse coverage, under the policies’ “household resident”

exclusions, because Sinclair lived with Epstein and his mother, Marsha Pasha. Epstein claims that the term “household resident” is ambiguous, and should therefore be construed against Prudential to allow coverage here. He also claims that it would violate public policy to construe the policy to preclude coverage.

Oral argument is not necessary to resolve this motion, because the issues have been clearly presented in the parties’ written submissions to the court. Based on a careful review of those submissions, the court finds that Epstein’s reading of the “household resident” exclusion is more persuasive. Therefore, Epstein’s motion for summary judgment will be granted, and Prudential’s motion will be denied.

II.

The material facts of this case are undisputed. The following statement of the facts is drawn from the deposition testimony of Epstein and his mother, and an affidavit from Sinclair, on which both parties rely. With one minor and immaterial exception, Prudential does not contest Epstein’s account of the facts, but only the legal import of those facts.

From 1997 until January 2002, defendant Adam Epstein lived with his mother, Marsha Pasha, in a townhouse she rented. He contributed money to the household expenses when he could, but apparently did not pay any fixed or regular rent. Pasha had previously lived in the house with her husband, Epstein’s step-father, but invited her son to join her when the couple separated.

At the same time that Epstein moved into the house, his girlfriend, Margaret

Sinclair, also took up residence there. Epstein does not dispute that he and Sinclair each resided in his mother's house, a concession Prudential argues should dispose of the case. However, Prudential does not dispute (and has provided no evidence contradicting) the additional details that Epstein offers to show that, notwithstanding that they resided in the same house, he and Sinclair were not members of the same household.

Epstein and Sinclair are not now, and have never been, related by marriage or otherwise.¹ Sinclair occupied her own private room in the house, and did not share a room with Epstein. Unlike Epstein, Sinclair paid a regular, fixed rent of \$50 per week to Pasha. She purchased her own food, prepared her own meals, and followed her own schedule. She owned her own vehicle, which Epstein did not drive, except when he was performing occasional maintenance on the vehicle. There is no evidence that Epstein and Sinclair managed their finances (or their automobile insurance needs) jointly.

On July 26, 2000, Epstein was severely injured in a car accident while driving Sinclair's car. He was driving the car only to assure himself that it was running properly, after he had made some minor repairs to the vehicle. He did regularly perform minor maintenance on Sinclair's car, as well as his own and his mother's vehicles. However, he

¹There is some ambiguity about whether Sinclair and Epstein have ever been engaged – Prudential in its complaint says yes, Epstein in his submission on summary judgment says no. Assuming *arguendo* that they were engaged at the time of the automobile accident, that affirmation of an intent to establish a joint household at some future date would not serve to alter the operative facts as to their living arrangements when the accident occurred.

did not regularly drive Sinclair's car.

Epstein sought to recover for his injuries under both his own and his mother's UM/UIM policies, both issued by plaintiff Prudential. Prudential denied the claims, on the ground that Sinclair was a resident of the same household as Epstein and his mother, and, therefore, under the policies' "household resident" exclusion, no coverage was available. Prudential then filed this declaratory action, seeking to confirm its supposed right not to provide coverage for Epstein's injuries.

III.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). A genuine issue of material fact exists if the record presents evidence on which a reasonable jury could find for the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). At the summary judgment stage, the court must view the evidence in the light most favorable to the non-moving party, and draw all reasonable favorable inferences. *See Dici v. Commonwealth*, 91 F.3d 542, 547 (3d Cir. 1996). However, the non-moving party must provide record evidence, not mere assertions, that the facts are sufficient to support his claims. *See Big Apple BMW, Inc. v. BMW of North America, Inc.*, 974 F.2d 1358, 1362-63 (3d Cir. 1992).

IV.

The most straightforward reading of the disputed policy language appears to favor Epstein's side of the argument. In addition, to the extent that the language is ambiguous, it must be construed against Prudential. Thus, summary judgment in favor of Epstein is appropriate.

A. The Policy Language

Epstein seeks coverage under the uninsured and underinsured motorist (UM/UIM) provisions of his own and his mother's automobile insurance policies. Each policy contains the following exclusion, under the heading "other household vehicles":

We will not pay for bodily injury to anyone occupying or struck by a motor vehicle owned or leased by you or a household resident which is not covered under this policy, or if the liability coverage of that vehicle is used to pay any portion of an insured's bodily injury liability claim.

Exh. A to Prudential's MSJ ("Epstein Policy"), at 36 (emphasis in original); Exh. B to Prudential's MSJ ("Pasha Policy"), at 30 (emphasis in original). Although "household resident" is defined in the policies, the definition is too circular to provide much help: "A **household resident** is someone who lives in your household. A **household resident** includes a **resident relative**." Epstein Policy at 14 (emphasis in original). The policies define "resident relative" as "someone who lives in **your** household and is related to you by blood, marriage, adoption or is a ward or foster child." *Id.* at 14. (This, of course, would not include Sinclair, who has never been Epstein's relative.) The broader category of "household resident" requires no officially-recognized relationship, but depends

entirely on the scope given to the term “household”. However, the Prudential policies offer no definition for this key term.

B. “Household” and Ambiguity Under Pennsylvania Law

Epstein argues that Sinclair was not a “household resident” at the time of the accident, and thus that he was not subject to the household vehicle exclusion while driving her car. He contends that the term “household resident” is ambiguous, and thus must be construed against Prudential to allow coverage here. It is well settled, and Prudential concedes, that under Pennsylvania law ambiguities are construed against an insurance company drafting a policy. *See Standard Venetian Blind Co. v. Amercian Empire Ins. Co.*, 469 A.2d 563, 566 (Pa. 1983). The critical question, then, is what “household resident” should mean, and whether the term is indeed ambiguous.

A term is ambiguous “if it is reasonably susceptible of different constructions and capable of being understood in more than one sense,” as it is applied to a particular set of facts. *See Madison Construction Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999). Under Pennsylvania law, this inquiry is generally for the court, rather than for a jury. *Id.* Of course, a court may not “distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity.” *Id.* If the language of a policy provision is clear and unambiguous, it should be enforced. However, if it is ambiguous, a policy provision “is to be construed in favor of the insured and against the insurer, the drafter of the agreement.” *Id.*

Although the Pennsylvania courts do not appear to have interpreted the term “household” in precisely Epstein’s situation, the courts’ treatment of the term in cases concerning the household membership of relatives is more consistent with Epstein’s interpretation than Prudential’s. Prudential seems to insist that Sinclair was a member of Epstein’s *household* for the reason that (as alleged by Prudential but denied by Epstein) she was Epstein’s fiancée² and lived in the same *house*. However, this is not enough. According to the Pennsylvania Superior Court, “[t]he term [household resident] does not apply to a relative, however close, who lives elsewhere; nor does it apply to a resident of the same residence who is not a member of the family, i.e., one who enjoys all the prerogatives of family life.” *Donegal Mutual Ins. Co. v. State Farm Mutual Auto. Ins. Co.*, 546 A.2d 1212, 1215-16 (Pa. Super. 1988). It does not appear that Sinclair enjoyed such a role vis-à-vis either Epstein or his mother.

The Pennsylvania courts’ most instructive treatment of the term “household” appears in *Hoff v. Hoff*, 1 A.2d 506 (Pa. Super. 1938). There, the Superior Court considered whether a married couple and their child were part of the same household as the husband’s parents, where they lived in the same house as the parents but maintained separate establishments in various ways. As in this case, the two groups shared a “single-family” home, and both used the home’s single kitchen. Like Epstein and Sinclair, though, the members of the two alleged households had separate rooms, purchased

²See note 1, *supra*.

groceries separately, and prepared and ate separate meals. The son's family paid half of the utility costs for the house, and the son's wife performed various housekeeping chores in lieu of the family's paying rent. Sinclair paid no separate utility costs, but did pay regular rent. Like Epstein and Sinclair, the two *Hoff* households did sometimes share meals and spend time together.

In *Hoff*, the court found that it was possible for two households to share an ordinary single-family home, declaring that “household means a domestic establishment *under a single head or management*,” not simply under a single roof. *Id.* at 508 (emphasis added). A household is “a group living together under a head so as to constitute a small social unit,” a “domestic establishment synonymous with the word ‘family’.” *Teetsel v. Nationwide Mut. Ins. Co.*, 37 Pa. D. & C.2d 246, 249 (Pa. Com. Pl. 1965). If “household” has any unambiguous meaning here, that meaning does not allow Prudential to include Sinclair in the “household” of either Epstein or his mother.

Therefore, Prudential's motion for summary judgment must be denied, and Epstein's motion granted.³

V.

Based on the Pennsylvania courts' treatment of the term “household” to date, the

³Because the textual dispute resolves this matter in Epstein's favor, the court will not consider Epstein's additional argument that it would violate public policy - as expressed in the Pennsylvania Motor Vehicle Financial Responsibility Law (“MVFRL”), which requires insurers to make UM/UIM coverage available - to interpret the “household resident” exclusion as broadly as Prudential would like.

plainest reading of the policies' definition of "household resident" favors Epstein. Moreover, even if the policy definition is ambiguous, it must be construed against Prudential. Therefore, in the accompanying Order, Prudential's Cross-Motion for Summary Judgment (Docket #11) will be denied, and Epstein's Cross-Motion for Summary Judgment (Docket #10) will be granted.

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ADAM EPSTEIN,

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ORDER

March 16, 2005

For the reasons stated in the accompanying memorandum, it is hereby ORDERED
that:

- (1) Defendant Adam Epstein's Motion for summary Judgment (Docket #10) is GRANTED;
- (2) Plaintiff Prudential Property and Casualty Insurance Company's Motion for Summary Judgment (Docket #11) is DENIED;
- (3) JUDGMENT shall be entered in favor of Defendant Adam Epstein.

Pollak, J.